

A “retailer maintaining a place of business in Illinois” as described in 86 Ill. Adm. Code 150.201(i) is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

March 20, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 11, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

FIRM has been engaged by a client to determine the applicability of Illinois sales and use taxes to sales of tangible personal property made by an Internet company. If you determine that sales or use taxes should be collected, our client requests a determination on proposed alternative methods of collecting the taxes.

### **Facts**

Company A is a ‘traditional’ retailer of tangible personal property with retail stores in your jurisdiction. Company A has created a separate, legally incorporated entity, Company B, to market and sell products via the Internet. Company A owns a majority of Company B’s common stock; however, Company A does not own enough of Company B’s common stock to require the filing of a consolidated federal tax return. Company C, an unrelated third party, owns the remaining minority portion of Company B’s stock.

Company B maintains a web-site on the Internet by which Company B advertises and sells tangible personal property. Customers can select and purchase products on-line. All purchases made over the Internet must be made using a credit card. Company B also distributes its own mail order catalogs via U.S. postal services. If a customer does not wish to place an order on the Internet, Company B will accept phone, fax or mail orders. All phone, fax or mail orders and inquiries are processed or answered at a Company B customer service center. None of Company B’s customer service centers are located in your jurisdiction. All orders received by Company B are fulfilled from a Texas location and are shipped via common carrier to the location specified by the customer. The location specified by the customer may include their residence, business, one of Company A’s retail locations, or the address of a third party recipient of the merchandise. All of Company B’s property and personnel are located in Texas.

Company A provides in-store displays that advertise Company B's web-site. Company A also references Company B's web-site in Company A's advertisements and catalogs.

Company C owns sales kiosks that provide a computer link to Company B's web-site. The sales kiosks are placed in Company A's retail locations. Customers and Company A's employees will use the kiosks to access and order products from Company B's web-site.

Company A will accept returns of merchandise purchased from Company B's web-site or mail order catalogs. Company A may issue refunds for returned items, issue store credits for returned items, or exchange store inventory for returned items.

Company B does not maintain any other contacts with Illinois other than those specified in the proceeding discussion.

### **Request for Determination**

Is Company B required to collect Illinois sales or use taxes on sales of tangible personal property made via the Internet, phone, fax or mail and delivered to a location within Illinois via common carrier?

If you determine that Company B is required to collect Illinois sales or use taxes, Company B desires to minimize the significant administrative burden of collecting the appropriate amount of tax. Company B proposes two alternative methods of collecting sales or use taxes.

#### **Alternative 1**

Company B will collect and remit sales or use tax based on the state tax rate only. Company B will not collect, or be held liable for, any local sales or use taxes.

#### **Alternative 2**

Company B will collect and remit sales or use taxes based on the state tax rate and a blended, or 'averaged', local tax rate. The blended local rate would be negotiated and agreed upon at a future date.

Either alternative presented would minimize the significant administrative burden of collecting sales or use taxes. If Company B is required to collect sales or use taxes, please consider the acceptability of the alternatives. If either alternative is acceptable, we will discuss the details of implementing an alternative.

Thank you for your consideration of this request. If you have any questions regarding this matter, you may contact me at #####.

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best

gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether you are responsible to pay tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

The fact that the company you describe as "Company A" also has sales kiosks linked to "Company B" within its retail locations in Illinois and accepts returns of merchandise that include the issuance of refunds, store credits and exchanges of store inventory, indicates that Company B has nexus with Illinois.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

If your client were determined to be an Illinois Retailer, they will be required to remit Retailers' Occupation Tax including applicable local taxes. For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance

concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

If your client were determined to be a retailer maintaining a place of business in Illinois, he would be required to collect and remit Use Tax at the rate of 6.25% from his customers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.